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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

Docket ID OCC-2012-0011

RIN 1557-AD61

**Rules of Practice and Procedure;
Rules of Practice and Procedure in Adjudicatory Proceedings;
Civil Money Penalty Inflation Adjustments**

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is clarifying the effective dates of the adjustments to the maximum amount of CMPs the OCC administers that were published on November 6, 2012.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 649-6293, Office of the Comptroller of the Currency, 400 Seventh Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2012, the OCC published a final rule that revised the charts set forth at 12 CFR 19.240(a) and at 12 CFR 109.103(c), to adjust the maximum amount of

the CMPs the OCC administers to account for inflation.¹ 77 FR 66529 (Nov. 6, 2012). These inflation adjustments were made pursuant to the Inflation Adjustment Act, 28 U.S.C. 2461 note, which requires the OCC, as well as other Federal agencies with CMP authority, periodically to evaluate and publish by regulation the inflation-adjusted maximum assessment for each CMP authorized by a law that the agency has jurisdiction to administer.

The charts set forth at 12 CFR 19.240(a) and 109.103(c) also reflected the new maximum CMP prescribed by section 100208 of the Biggert-Waters Flood Insurance Reform Act of 2012,² 42 U.S.C. 4012a(f)(5), which increased the maximum amount for each violation of certain provisions of the National Flood Insurance Act to \$2,000 and eliminated the \$135,000 cap on the total amount of penalties for these violations that could be assessed against a single regulated lender in any calendar year.

The effective date of the final rule was described as December 6, 2012. Moreover, §§ 19.240(b) and 109.103(c) stated that all of the adjustments in the revised charts would apply to violations that occurred after December 6, 2012.

Description of the Technical Correction

The effective date of the final rule published on November 6, 2012 was described as December 6, 2012. This technical correction amends §§ 19.240(b) and 109.103(c) to clarify that the inflation adjustments to the maximum amount of the OCC's CMPs made

¹ Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010), Congress transferred the powers, authorities, rights, and duties of the Office of Thrift Supervision (OTS) to the OCC on July 21, 2011, and the OCC assumed all functions of the OTS and the Director of the OTS relating to Federal savings associations. Therefore, the OCC now has responsibility for the ongoing supervision, examination, and regulation of Federal savings associations as of the transfer date. Although the final rule amended both 12 CFR part 19 and 12 CFR part 109, the OCC expects to consolidate these provisions in the future as part of its integration of the OCC and OTS rules.

² Pub. L. 112-141, 126 Stat. 919 (July 6, 2012).

pursuant to the Inflation Adjustment Act apply to violations that occurred both on or after December 6, 2012, consistent with the effective date of the rule.

This technical correction also clarifies the effective date of the changes to the flood insurance CMP described in the revised charts set forth at §§ 19.240(a) and 109.103(c), published on November 6, 2012. The OCC amended these CMP charts to incorporate the statutory changes to the flood insurance CMP at the same time it amended these charts to account for inflation. The effective date of the final rule was described as December 6, 2012, and the rule did not specifically provide a different effective date for the changes to the flood insurance CMP mandated by section 100208 of the Biggert-Waters Flood Insurance Reform Act, 42 U.S.C. 4012a(f)(5), which were effective upon enactment, i.e., July 6, 2012. Accordingly, the OCC is amending 12 CFR parts 19 and 109 to clarify that the changes to the flood insurance CMP prescribed by 42 U.S.C. 4012a(f)(5), incorporated into its CMP charts, apply to violations that occurred both on or after July 6, 2012, consistent with the effective date of section 100208 of the Biggert-Waters Flood Insurance Reform Act.

Procedural Issues

Notice and Comment Procedure

Under the Administrative Procedure Act (APA), the requirement to provide public notice and an opportunity for comment does not apply if the agency finds, for good cause, that these procedural requirements are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(B). As described above, this final rule is a technical correction that merely clarifies the effective date of the inflation adjustments to the OCC's CMPs and changes the effective date of the flood insurance

CMP in parts 19 and 109 to confirm with that mandated by Congress. It is in the public interest to clarify these effective dates and eliminate any potential confusion as quickly as possible. For this reason, the OCC has concluded that notice and comment procedures are unnecessary and contrary to the public interest and that good cause exists for dispensing with them.

Effective Date

The APA generally requires an agency to publish a substantive rule 30 days prior to its effective date. See 5 U.S.C. 553(d). As described above, this final rule merely clarifies the effective date of the inflation adjustments to the OCC's CMPs and the changes to the flood insurance CMP that were mandated by Congress. It is in the public interest to clarify the effective date as quickly as possible. Accordingly, the OCC finds that good cause exists to dispense with a delayed effective date.

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. See 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule does not impose any additional reporting, disclosures, or other new requirements. Accordingly, the OCC finds good cause for an immediate effective date.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5

U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires an agency to prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act applies only when an agency issues a general notice of proposed rulemaking. Because we are not publishing a notice of proposed rulemaking, this final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 109

Administrative practice and procedure, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 19 – RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

Subpart O – Civil Money Penalty Adjustments

2. The heading to subpart O is revised as set forth above.
3. Section 19.240 is amended by revising the section heading, the introductory text to paragraph (a), (b), and adding paragraph (c) to read as follows:

§ 19.240 Civil Money Penalties.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is set forth as follows:

* * * * *

(b) Except as provided in paragraph (c) of this section, the maximum amount of each civil money penalty, set forth in the chart in paragraph (a) of this section, applies to violations that occurred on or after December 6, 2012.

(c) The maximum amount of the civil money penalty prescribed by 42 U.S.C. 4012a(f)(5), set forth in the chart in paragraph (a) of this section, applies to violations that occurred on or after July 6, 2012.

PART 109 – RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

4. The authority citation for part 109 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1829(e), 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(l), 78o-5, 78u-2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

5. Section 109.103 is amended by revising the introductory text to paragraph (c), , and adding paragraph (d) to read as follows:

§ 109.103 Civil money penalties.

* * * * *

(c) Maximum amount of civil money penalties. Except as provided in paragraph (d) of this section, the maximum amount of each civil money penalty in the chart below applies to violations that occurred on or after December 6, 2012:

* * * * *

(d) Flood insurance penalty. The maximum amount of the civil money penalty prescribed by 42 U.S.C. 4012a(f), set forth in the chart in paragraph (c) of this section, applies to violations that occurred on or after July 6, 2012.

Dated: December 21, 2012

Daniel P. Stipano,
Acting Chief Counsel.

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